STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 15, 2013
v	No. 313192 Ingham Circuit Court
JOSEPH AMMAR ASHOUR, Defendant-Appellant.	LC No. 11-000748-FC

Before: OWENS, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.529 and MCL 750.157a, carrying a weapon in a vehicle, MCL 750.227(1), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to concurrent prison terms of 7.5 to 20 years for the armed robbery and conspiracy to commit armed robbery convictions, and 13 months to 5 years for the concealed weapon conviction, all consecutive to a two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first asserts that the trial court erred in denying his motion for a directed verdict. We review de novo sufficiency claims. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). We "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748, as amended 441 Mich 1201 (1992).

The evidence established that defendant and his co-defendant, Santiago Hankinson, drove to Charles Wilborn's house. Hankinson met Wilburn outside and the two proceeded into Wilburn's house. Defendant remained in the car the entire time. Wilburn and his nephew both testified that, upon entering the house, Hankinson pulled out a handgun and demanded money from Wilburn. At this point, two other men entered the house and demanded that everyone get down on the floor. Wilburn and his nephew testified that the two men were armed, one with a shotgun and the other with a handgun. Hankinson denied ever pulling out a gun, but offered similar testimony regarding the entry of the other two men.

Wilburn's neighbor, Calvin Lee, and Lee's step-father, Booker Jackson, were both outside when defendant and Hankinson arrived. Jackson testified that he witnessed two men get

out of the car, one armed with a long barreled gun. However, Jackson also testified that the car was blue or black, while every other witness testified that it was red or maroon. Jackson also identified one of the two men who subsequently got out of the car as Hankinson, which was inconsistent with the testimony of Wilburn and his nephew, who testified that Hankinson entered the house with Wilburn and that the other two men entered later. However, Lee, who had gone behind his house to feed his dog, testified that when he returned and Jackson told him what was going on, he went to confront defendant, who was still in the car. When Lee asked defendant what was going on, defendant replied "none of your F-in' business." At this point, Lee called 911.

Wilburn and his nephew testified that Hankinson and the others searched the house and, at one point, Hankinson and another man assaulted Wilburn's nephew. Hankinson testified that it was only the other two men who were involved with the robbery and assault. Wilburn's sister and girlfriend walked in on the robbery. One of the robbers told them to get out. The two men that had arrived after Hankinson then ran out the back door while Hankinson proceeded out the front door. Wilburn testified that Hankinson was carrying a backpack into which Wilburn's nephew had seen the robbers put stolen property. Wilburn caught up with Hankinson as Hankinson was entering the rear passenger seat of the car. Wilburn punched Hankinson in the face and gained control of the backpack. The car then drove off.

The police caught up with the car shortly thereafter. The police performed a felony stop on the vehicle and identified the driver as defendant and the passenger as Hankinson. Several cell phones belonging to Wilburn were discovered as well as around $1,900 in cash.

Regarding the charge of armed robbery, we find the evidence sufficient. The jury was instructed that defendant could be found guilty on this charge based on an aiding and abetting theory. Circumstantial evidence that a defendant provided the necessary transportation to commit the armed robbery is sufficient. *People v Hodo*, 51 Mich App 628, 635-636; 215 NW2d 733 (1974). In *Hodo*, the defendant had been seen with the principal offender the day prior to renting a U-haul truck. *Id.* A similar looking truck was then seen near the site of the armed robbery. We concluded that a rational trier of fact could have found that the defendant aided and abetted in the commission of the armed robbery by "furnishing the necessary transportation with knowledge of its ultimate use." *Id.* at 636. The evidence in this case is greater than it was in *Hodo*. It is undisputed that defendant provided Hankinson with transportation to and from Wilburn's house. Two witnesses identified Hankinson as a key participant in the armed robbery. Although some of Jackson's testimony was inconsistent, he reported seeing two individuals, matching the description of those involved in the robbery, get out of defendant's car and indicated that one of these individuals was armed with a long barreled gun. The evidence indicated that defendant specifically drove Hankinson to and from the crime scene to commit the armed robbery.

Likewise, because defendant only challenged his felony-firearm conviction on the basis that he had insufficient knowledge of the armed robbery and the acts associated with it, we hold that the record also provided ample evidence to support defendant's felony-firearm conviction.

Evidence was also sufficient to convict defendant of conspiracy to commit armed robbery. "Direct proof of a conspiracy is not required; rather, 'proof may be derived from the

circumstances, acts and conduct of the parties.'" *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541, quoting *People v Justice*, 454 Mich 334, 347; 562 NW2d 652 (1997). Again, the evidence established that defendant drove Hankinson to and from the house. There was evidence that defendant could hear a robbery taking place and when a neighbor inquired, defendant told him to go away. Further, there was evidence that defendant drove at least one other man, who possessed a long-barreled gun, to the scene of the robbery. This evidence was sufficient for a rational trier of fact to conclude that defendant conspired to commit the crime of armed robbery.

Regarding the carrying a weapon in a vehicle[1] conviction, defendant argues that the conviction should be reversed because there was a lack of knowledge of a concealed weapon. Specifically, defendant argues that, even if Hankinson had a weapon, one can only speculate that defendant knew it was in Hankinson's pocket as Hankinson left the vehicle, and the other person exited the vehicle with the weapon visible, thereby precluding any conviction for a concealed weapon. The problem with this argument is that it assumes that concealment is an element of the offense for which defendant was convicted. It is not. The statute prohibits carrying a weapon "concealed *or otherwise* in any vehicle operated or occupied by the person." MCL 750.227(1) (emphasis added). Here, the evidence in a light most favorable to the prosecution established that defendant knew there were weapons in the vehicle he was operating, as evidenced by the visible possession of the long-barreled weapon by the person who exited the vehicle after Hankinson.[2]

Finally, defendant argues that his convictions were against the great weight of the evidence. Defendant did not move for a new trial and accordingly, our review is for plain error affecting a substantial right. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

We have generally held that a verdict is against the great weight of the evidence only when "it was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence." *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). We will overturn the verdict only if it is so "against the great weight of the evidence" that "it would be a miscarriage of justice to allow [it] to stand." *Id.*

Defendant points to the testimony of Wilburn's nephew and Jackson, which was impeached or contradicted by the testimony of other witnesses. However, conflicting and impeached testimony is only against the great weight of the evidence if the contradictions or impeachment deprived the evidence of all probative value. *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). In the majority of cases, "conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial." *Id.* (quotation marks and citations omitted).

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[1] Defendant's brief erroneously alleges that defendant was convicted of carrying a concealed weapon, although it correctly used the elements of carrying a weapon in a vehicle.

[2] Moreover, even if there were some question about whether defendant met the elements of this crime himself, the record provides ample support to sustain defendant's conviction under an aiding and abetting theory.

The conflicting and impeached testimony to which defendant points regards minor issues. For example, Jackson testified that the color of defendant's car was blue or black, when every other witness identified the color as red or maroon. Jackson also identified Hankinson as the person who entered the house with another tall armed man, while both Wilburn and his nephew testified that Hankinson entered the house with Wilburn. Wilburn's nephew was also impeached at trial, mostly regarding his testimony on the location of the backpack used by the robbers. Because these contradictions were all on minor issues, they did not rise to a level that would deprive the testimony of all its probative value.

Affirmed.

/s/ Donald S. Owens
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens